

TITLE 17: CONSERVATION  
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES  
SUBCHAPTER h: WATER RESOURCES

PART 3704  
REGULATION OF PUBLIC WATERS

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3704.APPENDIX A	Public Bodies of Water

**AUTHORITY:** Implementing and authorized by the Rivers, Lakes and Streams Act [615 ILCS 5].

**SOURCE:** Adopted at 17 Ill. Reg. 4494, effective March 23, 1993; recodified from 92 Ill. Adm. Code 704, Department of Transportation, to the Department of Natural Resources, at 22 Ill. Reg. 7362; amended at 27 Ill. Reg. 7778, effective April 21, 2003; amended at 29 Ill. Reg. 8320, effective May 26, 2005; amended at 34 Ill. Reg. \_\_\_\_\_, effective August 20, 2010.

**Section 3704.10 Purpose**

- a) The purpose of this Part is to protect the public's interests, rights, safety and welfare in the State's public bodies of water. More specifically, construction will be regulated to prevent:
  - 1) Obstruction to, or interference with, the navigability of any public body of water;
  - 2) Encroachment on any public body of water; and
  - 3) Impairment of the rights, interests or uses of the public in any public body of water or in the natural resources thereof.
- b) This Part applies to the entire State geographically but is limited to only those lakes, rivers, streams and waterways that are considered to be public waters.

- c) Compliance with this Part does not excuse an applicant from complying with the following Department of Natural Resource, Office of Water Resources construction related rules:
  - 1) Rules for Construction and Maintenance of Dams, 17 Ill. Adm. Code 3702. This Part is applicable statewide.
  - 2) Floodway Construction in Northeastern Illinois, 17 Ill. Adm. Code 3708. This Part applies to all defined floodways in the counties of Cook, Will, Dupage, Kane, Lake and McHenry.
  - 3) Construction in Floodways of Rivers, Lakes and Streams, 17 Ill. Adm. Code 3700. This Part is applicable to all rivers, lakes and streams under the Department's jurisdiction except those in the counties of Cook, Will, DuPage, Kane, Lake and McHenry for which floodway limits have been defined pursuant to 17 Ill. Adm. Code 3708.
- d) Additionally, permits issued under this Part do not relieve the permittee of the responsibility of securing all other required authorizations.

#### **Section 3704.20 Definitions**

As used in this Part, the words and terms listed shall have the meanings as described to them as follows:

*"Barge Fleeting Area"* A facility, at a fixed site, which is used to provide barge mooring services [615 ILCS 5/18].

*"Construction"* The placement, erection, or reconstruction of any building or structure, any filling or excavation, the installation of any utility, or the storage of any materials. Construction includes, but is not limited to, barge loading and unloading facilities, marinas, dredging and the disposal of dredged material, bridges, boat docking facilities, and bank protection activities.

*"Department"* The Illinois Department of Natural Resources.

*"Permittee"* The person issued a permit pursuant to this Part.

*"Public Bodies of Water" or "Public Waters"* All lakes, rivers, streams and waterways which are or were navigable and are open or dedicated to public use including all bayous, sloughs, backwaters and submerged lands connected by water to the main channel or body of water during normal flows or stages.

#### **Section 3704.30 Jurisdiction**

- a) Construction in any public body of water is subject to this Part and requires a permit from the Department.

- b) Any activity on a public body of water which could result in a restriction of the access to, or use or enjoyment of, the water such as the temporary placement of floating buildings for commercial purposes and the designation of areas for exclusive use for sporting events, is subject to this Part and requires a permit from the Department.
- c) The following activities are exempt from this Part:
  - 1) Normal and lawful uses of a public body of water such as commercial navigation, boating, fishing, trapping, hunting, swimming, and wading;
  - 2) Barge fleeting areas;
  - 3) Duckblinds which comply with the regulations of the Illinois Department of Natural Resources;
  - 4) The removal of trash or other debris;
  - 5) Routine maintenance and repair of existing structures; and
  - 6) Channel marking buoys and other similar navigation devices placed by public agencies.

#### **Section 3704.40 List of Public Waters and Provision For Additions**

The public waters of the State are listed in Section 3704. Appendix A. When the Department obtains information sufficient to determine that a body of water is a public water, that body of water will be added to the list. Any person may petition for an order to add a body of water to the list when it can be shown that the candidate is or was navigable and is open or dedicated to public use. The petition shall contain the following information, when known:

- a) Name of the body of water, and in the case of a backwater lake or slough, the name of the main body of water it is connected to or a part of;
- b) Location: section, township, range, county;
- c) A statement on its past or present navigability; or, alternatively, a statement that it is a backwater lake or slough connected to or a part of a navigable body of water;
- d) The legal authority or instrument by which the body of water was opened or dedicated to public use; or
- e) If documentary evidence cannot be found, statements of persons living along that body of water that:
  - 1) It is common knowledge that the water has always been open to public use, or
  - 2) It is known that the riparian owners intended to dedicate the water to

public use and a description of the information showing the intent to dedicate such as maps, plats, or written instruments;

- f) Names of federal or State agencies or units of local government operating, maintaining or regulating public use of the body of water; and
- g) Any maps, documents, or other data supporting the petition.

### **Section 3704.50 Permit Application**

An applicant who desires a permit under this Part shall file with the Department an application consisting of a properly executed application form and all plans and information required to determine the effect of the construction on the public body of water. All portions of the application form, including the name and address of the applicant, a description of the proposed activity, the location of the activity, and the names and addresses of all adjoining property owners, shall be completed and all required attachments must be submitted before a determination of permissibility will be made. Application forms may be obtained from the Illinois Department of Natural Resources, Office of Water Resources at any of the following addresses:

One Natural Resources Way  
Springfield IL 62702-1271

Michael A. Bilandic Building  
160 N. LaSalle Street, Suite S-700  
Chicago IL 60601

Region 2 Office  
2050 West Stearns Road  
Bartlett IL 60103

Many activities permitted under this Part require review of the U.S. Army Corps of Engineers and the Illinois Environmental Protection Agency. To simplify application procedures, the Illinois Department of Natural Resources, Office of Water Resources utilizes a joint application form with these two agencies.

(Source: Amended at 34 Ill. Reg. \_\_\_\_\_, effective August 20, 2010)

### **Section 3704.60 Notice to Interested Parties**

Upon receipt of an application the Department will, unless the activity is covered by a Statewide, Regional or General Permit (see Sections 3704.110 and 3704.120 of this Part), issue a notice of the application, allowing a period of at least 21 days for the submission of comments. The notice will contain a description of the proposed activity, its location and the name of a Department contact. Notices will be released as news items and will be mailed to the following:

- a) Owners of adjacent and potentially affected property;
- b) Interested state and federal agencies;

- c) Area legislators;
- d) Local officials of potentially affected communities and governmental agencies;
- e) Adjacent states when interstate waters are involved;
- f) Groups and organizations known to have an interest in actions affecting the project area; and
- g) The applicant.

#### **Section 3704.70 Land Conversions and Fill Material Placement**

a) Land Conversions

The conversion of public waters to private land by filling is prohibited.

b) Fill Material Placement

Fill material may be placed in public waters only for the following purposes:

- 1) Bank, shore or bluff protection;
- 2) Beach nourishment;
- 3) Establishing a uniform shoreline;
- 4) Spur dikes, wing dams, and similar structures;
- 5) Dams which would be in compliance with the Department's rules for Construction and Maintenance of Dams, 17 Ill. Adm. Code 3702;
- 6) Projects of an emergency nature which the Department determines to be in the public interest and which otherwise would be in compliance with this Part such as fills needed to prevent the failure of a structure;
- 7) Projects authorized by the General Assembly, to the extent necessary to achieve the purpose of the fill (such authorizations are only provided to public agencies to serve public purposes);
- 8) Filling of a slip pursuant to the provisions of [615 ILCS 5/18] (such permits are only granted after public hearing and with the approval of the Governor); and
- 9) Open water disposal of material dredged from a navigation channel. Open water does not include: any shallows or shorewaters predominantly occupied by submerged or floating aquatic vegetation regardless of bed material transport; any backwaters, sloughs, back channels, oxbows, or bays; areas within the depositional influence of dikes, sills, breakwaters,

or other structures where subsequent sediment transport is largely arrested; or areas where sediment tends to accumulate or from which sediment may migrate into a backwater.

#### **Section 3704.80 Department Evaluation**

- a) Upon receipt of an application the Department will make an evaluation, based on the type and magnitude of the activity and on the existing conditions of the body of water in the locality of the activity, of the potential of the activity to result in:
  - 1) An obstruction to, or interference with, the navigability of any public body of water;
  - 2) An encroachment on any public body of water;
  - 3) An impairment of any rights, interests or uses of the public in any public body of water or in the natural resources thereof; or
  - 4) Bank or shoreline instability on other properties.

If it is determined that the activity would not cause any of the listed impacts, the activity will be considered permissible under this Part.

- b) If it is determined that the activity would likely cause any of the impacts listed in subsection (a) of this Section, the applicant will be required to submit the following supplemental information (unless the plans are modified to remove the potential for the impact(s)):
  - 1) An evaluation of the benefits to the public interest in the body of water which would result from the activity;
  - 2) A discussion of the measures to be provided in the project design, construction and operation which would minimize and/or mitigate the negative impacts; and
  - 3) An analysis of the extent and permanence of the activity's encroachment on the body of water and of any impairment the activity would have on the rights, interests or uses of the public in the body of water and in the natural resources thereof. The analysis shall consider both the activity alone and the combined effects of similar activities which exist and/or could be lawfully undertaken in the locality. The analysis should be expressed in quantitative terms to the fullest extent practicable and should be performed by persons with expertise in such impact analysis.

#### **Section 3704.90 Departmental Standards**

- a) No activity which would result in an obstruction to, or interference with, the navigability of any public body of water will be permitted.

- b) No activity which would result in bank or shoreline instability on other properties will be permitted.
- c) If it is determined that an activity would result in a long-term or permanent encroachment on a public body of water or impairment of any rights, interests or uses of the public in the body of water or in the natural resources thereof, a permit will be issued only if it is demonstrated that:
  - 1) The project has been designed and will be constructed and operated in a way which will minimize and mitigate to the fullest practicable extent its encroachment on the body of water and its impairment of the rights, interests and uses of the public in the body of water and in the natural resources thereof; and
  - 2) There would be a public benefit, such as the enhancement of navigation, boating, hunting or other normal and lawful use of the body of water, resulting from the activity which would offset the encroachment and/or impairment impacts.

#### **Section 3704.100 Emergency Permit**

The Department may issue an emergency permit after receipt of a properly executed application (including an explanation of why the work to be performed is of an emergency nature) if harm to life or loss of property is likely to occur if initiation of the activity is delayed. An applicant for an emergency permit is deemed to have agreed to make modifications, at its own expense, required by the Department, based upon completion of a detailed review and on comments received during the public comment period, to bring the activity into compliance with this Part.

#### **Section 3704.110 Statewide and Regional Permits**

The Department may, by issuance of a statewide or regional permit, grant approval for specific types of activities, such as aerial utility crossings and recreational boat docking facilities, which would not cause the impacts listed in Section 3704.80. Subsequent to the issuance of a statewide or regional permit, no application or further authorization will be required by the Department for activities meeting the terms and conditions of the permit. Statewide and regional permits will be issued only after notice and opportunity for public review and comment.

#### **Section 3704.120 General Permits**

The Department may, for the purpose of providing more expeditious processing of permit applications, issue general permits pertaining to specific types of activities, such as boat launching facilities, meeting such conditions as necessary to assure compliance with the purpose and intent of this Part. General permits may be applicable on a statewide basis, or may be restricted to specified public bodies of water. Subsequent to the issuance of a general permit, individual applications must still be submitted but authorizations will be granted for activities meeting all of the terms and conditions of the general permit without notice or interagency coordination. General permits will be issued only after notice and opportunity for public review and comment.

**Section 3704.130 Denial of Applications**

Applications not meeting the requirements of this Part will be denied. If an application for permit is denied, the Department will submit a letter, based on the administrative record, to the applicant explaining the reason(s) for denial. The application may be resubmitted for consideration if it can be modified to meet the Department's objections as specified in the letter of denial.

**Section 3704.140 Violations and Enforcement**

- a) When the Department becomes aware of an unauthorized activity or permit violation, it will conduct an investigation to determine the facts regarding the activity or violation and will advise the responsible party what actions are required to comply with State statutes and this Part. When the responsible party fails to perform the specified actions, enforcement will be sought as determined by the Department to be necessary and appropriate.
- b) Investigations may be initiated by the Department on its own or in response to complaints involving activities undertaken without a permit, or activities not in compliance with the terms and conditions of a permit. Complaints shall be in writing and shall contain the name, address and telephone number of the party believed to be responsible, the nature of the alleged violation, the location of the activity, and the name of the body of water affected.
- c) *Any structure, fill, or deposit erected or made in any of the public bodies of water of this State determined to be in violation of the regulation, is a purpresture and may be abated as such at the expense of the person, corporation, company, city, municipality, or other agency responsible therefor* (Section 18 of the Act). The Department may require the owner to remove the purpresture within 15 days after receipt of written notice. Any structure, fill, or deposit not so removed may be removed by the Department at the owner's expense.

**Section 3704.150 Final Administrative Decision**

The approval or denial of applications for permit under this Part shall be considered final administrative decisions and are subject to judicial review in accordance with Article III of the Code of Civil Procedure (Administrative Review Law) [735 ILCS 5/Art. III]



**Section 3704.APPENDIX A Public Bodies of Water**

The following public bodies of water were navigable in their natural condition or were improved for navigation and opened to public use. The entire length and surface area in Illinois, including all backwater lakes and sloughs open to the main channel or body of water at normal flows or stages, are open to the public unless limited to a head of navigation as stated. Head of navigation descriptions use the U.S. rectangular survey system and these abbreviations: T = township, R = range, PM = principle meridian, Sec. = section, 1/4 = quarter section, N = north, E = east, S = south, W = west, USGS = U.S. Geological Survey.

- 1) Lake Michigan;
- 2) Chicago River: Main Branch;
- 3) Chicago River: North Branch to North Shore Channel;
- 4) Chicago River: South Branch;
- 5) Chicago River: South Fork of South Branch;
- 6) Chicago River: East and West Arms of South Fork of South Branch;
- 7) Chicago River: West Fork of South Branch to Chicago Sanitary and Ship Canal;
- 8) Calumet River;
- 9) Lake Calumet and entrance channel to Calumet River;
- 10) Grand Calumet River;
- 11) Little Calumet River;
- 12) Wolf Lake (Cook County);
- 13) Mississippi River (including all backwater lakes such as Frentress Lake in Jo Daviess County, Boston Bay in Mercer County and Quincy Bay in Adams County);
- 14) Sinsiniwa River to North Line of Sec. 9, T28N, R1W, 4th PM in Jo Daviess County, which is located approximately two-thirds mile downstream from the U.S. Highway 20 bridge. This area is shown on the Galena, Ill.-Iowa, 7.5 minute USGS quadrangle map;
- 15) Galena River to East Line of Sec. 6, T28N, R1E, 4th PM in Jo Daviess County, which is located approximately one-half mile upstream from the County Highway 67 bridge. This area is shown on the Galena, Ill.-Iowa, 7.5 minute USGS quadrangle map;
- 16) Apple River to North Line of Sec. 35, T26N, R2E, 4th PM in Jo Daviess County;

- 17) Plum River to North Line, T24N, R3E, 4th PM in Carroll County, which is located approximately one and one-half miles upstream from the U.S. Highway 52 bridge. This area is shown on the Savanna, Ill., 15 minute USGS quadrangle map;
- 18) Rock River;
- 19) Pecatonica River;
- 20) Sugar River (Winnebago County);
- 21) Stillman Creek to South Line, T25N, R11E, 4th PM in Ogle County, which is located approximately one-third mile downstream from the Illinois Highway 72 bridge. This area is shown on the Stillman Valley, 7.5 minute USGS quadrangle map;
- 22) Henderson Creek (new channel) to East Line, SW 1/4, Sec. 6, T10N, R5W, 4th PM in Henderson County. The river has been relocated and the old channel abandoned;
- 23) The Sny in Adams, Pike and Calhoun Counties. The area has been drained with levees and ditches and it is uncertain that any descendent body of water exists;
- 24) Bay Creek to West Line, Sec. 29, T8S, R3W, 4th PM in Calhoun County. The head of navigation is the limit of meanders on the official plat of survey; but it is uncertain that any descendent body of water exists;
- 25) Illinois River (including all backwater lakes such as Peoria Lake in Peoria, Tazewell and Woodford Counties; Matanzas Bay in Mason County; and Meredosia Lake in Cass and Morgan Counties);
- 26) Des Plaines River to Hoffman Dam in Cook County, which is located one-half mile downstream from the junction with Salt Creek. This area is shown on the Berwyn, 7.5 minute USGS quadrangle map;
- 27) Kankakee River;
- 28) Iroquois River to South Line, SW 1/4, Sec. 30, T27N, R12W, 2nd PM in Iroquois County, which is located approximately one mile downstream from the junction with Sugar Creek. This area is shown on the Gilman, 15 minute USGS quadrangle;
- 29) Fox River (Illinois River Basin);
- 30) Griswold Lake (McHenry County);
- 31) Fox Chain-O-Lakes (Lake and McHenry Counties): Bluff Lake, Lake Catherine, Channel Lake, Fox Lake, Grass Lake, Lake Marie, Nippersink Lake, Dunns Lake,

- Pistakee Lake, Lake Jerilyn, Lac Louette, Redhead Lake;
- 32) Vermilion River (Illinois River Basin) to approximately one-half mile above the mouth near Oglesby in LaSalle County;
  - 33) Spring Lake (Tazewell County);
  - 34) Spoon River to North Line, Sec. 24, T6N, R1E, 4th PM in Fulton County, which is located approximately one-half mile upstream from the Illinois Highway 95 bridge. This area is shown on the Smithfield, 7.5 minute USGS quadrangle map;
  - 35) Sangamon River to South Line, NE 1/4, Sec. 1, T15N, R4W, 3rd PM in Sangamon County, which is located approximately one mile south of the Mechanicsburg Road bridge. This area is shown on the Mechanicsburg, 7.5 minute USGS quadrangle map;
  - 36) Sangamon River: South Fork to South Line, Sec. 33, T16N, R4W, 3rd PM in Sangamon County, which is located approximately two miles upstream from the mouth. This area is shown on the Springfield-East, 7.5 minute USGS quadrangle map;
  - 37) Macoupin Creek to East Line, Sec. 25, T9N, R13W, 3rd PM in Green and Jersey Counties, which is located approximately one mile downstream from the junction with Boyer Creek. This area is shown on the Boyer Creek, 7.5 minute USGS quadrangle map;
  - 38) Otter Creek to East Line of Sec. 3, T7N, R13W, 3rd PM in Jersey County, which is located approximately two miles east of the Illinois Highway 100 bridge. This area is shown on the Nutwood, 7.5 minute USGS quadrangle map;
  - 39) Kaskaskia River to East Line, SW 1/4, Sec. 31, T8N, R2E, 3rd PM, which is located nine miles south and two miles west of Herrick. This area is shown on the Vera, 7.5 minute USGS quadrangle map;
  - 40) Big Muddy River to East Line T8S, R2W, 3rd PM in Jackson County, which is located approximately one mile northwest of the Southern Illinois Airport. This area is shown on the Murphysboro, 7.5 minute USGS quadrangle map;
  - 41) Ohio River;
  - 42) Wabash River;
  - 43) Vermilion River (Wabash River Basin) to West Line, T19N, R11W, 2nd PM in Vermilion County, which is located approximately one mile upstream from the junction with the North Fork. This area is shown on the Danville, SW, 7.5 minute USGS quadrangle map;
  - 44) Little Wabash River to the Illinois Highway 1 bridge in Carmi in White County;

- 45) Saline River to junction of North Fork and South Fork;
- 46) Saline River: North Fork to North Line, Sec. 5, T8S, R8E, 3rd PM in Gallatin County, which is located approximately three miles south of the junction of Illinois Highway 141 and U.S. Highway 45. This area is shown on the Ridgway, 7.5 minute USGS quadrangle map;
- 47) Saline River: South Fork to West Line, T9S, R8E, 3rd PM in Gallatin County, which is located at the Gallatin-Saline County line. This area is shown on the Equality, 7.5 minute USGS quadrangle map;
- 48) Horseshoe Lake (Alexander County).

The following public bodies of water are primarily artificial navigable waters that were opened to public use.

- 1) Illinois and Michigan Canal;
- 2) Illinois and Mississippi (Hennepin) Canal and Canal Feeder;
- 3) North Shore Channel (Cook County);
- 4) North Branch Canal of North Branch Chicago River(Cook County);
- 5) Relocated South Branch Chicago River (Cook County);
- 6) Chicago Sanitary and Ship Canal;
- 7) Calumet Sag Channel;
- 8) Marseilles Canal (LaSalle County);
- 9) Chain of Rocks Canal (Madison County);
- 10) Relocated Kaskaskia River.

The following public bodies of water are navigable waters that were dedicated to public use. This list is incomplete. It is believed there are numerous channels and slips in subdivisions on the margins of public bodies of water which have been dedicated by plat. Additional channels and slips have been dedicated by common law.

- 1) Petite Lake, Spring Lake and connecting channels between Bluff Lake and Fox Lake in Lake County.